

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

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|---|--|--|
| United States District Court | | District <u>MIDDLE, STATE OF ALABAMA</u> |
| Name (under which you were convicted): <u>JAMES E. GRAHAM, JR.</u> | | Docket or Case No.: <u>2:06cv132-F</u> |
| Place of Confinement: <u>STATON CF, ELMORE, ALABAMA</u> | | Prisoner No.: <u>133708</u> |
| Petitioner (include the name under which you were convicted) <u>JAMES E. GRAHAM, JR.</u> | | Respondent (authorized person having custody of petitioner) <u>LEON FORNISS, WARDEN</u> |
| The Attorney General of the State of <u>Alabama</u> | | <u>2:06cv132-F</u> |

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: CIRCUIT COURT OF SHELBY COUNTY, ALABAMA;
COLUMBIANA, ALABAMA
- (b) Criminal docket or case number (if you know): CC-00-884, 885, AND 886
- (a) Date of the judgment of conviction (if you know): SEPTEMBER 27, 2001
- (b) Date of sentencing: OCTOBER 25, 2001
- Length of sentence: LIFE
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case:
RAPE 1°, SODOMY 1°, SEXUAL ABUSE 1°
- (a) What was your plea? (Check one)

| | |
|--|---|
| (1) Not guilty <input checked="" type="checkbox"/> | (3) Nolo contendere (no contest) <input type="checkbox"/> |
| (2) Guilty <input type="checkbox"/> | (4) Insanity plea <input type="checkbox"/> |

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: ALABAMA COURT OF CRIMINAL APPEALS

(b) Docket or case number (if you know): CR-01-0458

(c) Result: AFFIRMED BY MEMORANDUM

(d) Date of result (if you know): AUGUST 16, 2002

(e) Citation to the case (if you know): GRAHAM V STATE, 868 So 2d 481 (Ala Crim App 2002)

(f) Grounds raised: 1) ALLEGED BAD ACTS OR CONDUCT OF PETITIONER ADMITTED AFTER OBJECTION WAS PREJUDICIAL TO REFERRAL; 2) PETITIONER DENIED CONSTITUTIONAL RIGHT OF CONFRONTATION; 3) WHETHER TRIAL COURT ERRED IN FAILING TO GRANT CHALLENGES FOR CAUSE; 4) WHETHER TRIAL COURT ERRED IN FAILING TO CONDUCT A HEARING ON PETITIONERS 'BATSON' CHALLENGE; 5) WAS EVIDENCE SUBMITTED SUFFICIENT TO SUPPORT JURYS VERDICT?

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: SUPREME COURT OF THE STATE OF ALABAMA

(2) Docket or case number (if you know): CR-01-0458

(3) Result: CERTIORARI DENIED

(4) Date of result (if you know): FEBRUARY 21, 2003

(5) Citation to the case (if you know): GRAHAM V STATE

(6) Grounds raised: 1) DID COURT ERR TO REVERSAL IN ALLOWING OVER OBJECTION STATEMENTS CONTAINING HIGHLY PREJUDICIAL INFORMATION OF SPECIFIC BAD ACTS OR CONDUCT OF PETITIONER; 2) WHETHER PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT OF CONFRONTATION BY TRIAL COURTS REFUSAL TO ALLOW HIM TO CALL LIZ STEWART, THE COMPLAINING WITNESS' COUNSELOR TO TESTIFY?

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: CIRCUIT COURT OF SHELBY COUNTY, ALABAMA
(2) Docket or case number (if you know): CC-2000-884, 885, AND 886 (CONSOLIDATED)
(3) Date of filing (if you know): NOVEMBER 21, 2003
(4) Nature of the proceeding: RULE 32 ALA CRIM PROC
(5) Grounds raised: 1) PETITIONERS CONVICTION IS IN VIOLATION OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I § 6 OF THE ALABAMA CONSTITUTION OF 1901.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: SUMMARILY DENIED

(8) Date of result (if you know): DECEMBER 8, 2004

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: PETITIONER WAS DENIED 6TH AND 14TH AMENDMENT
RIGHT OF CONFRONTATION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

PETITIONER WAS NOT ALLOWED TO CALL LIZ STEWART TO CONFRONT AND OBTAIN EVIDENCE OF TRUSTWORTHINESS AS TO ADMITTED HEARSAY STATEMENTS MADE BY VICTIM AND AS SUCH WAS DEPRIVED OF THE OPPORTUNITY TO SET OUT FACTORS THAT PROPERLY RELATE TO WHETHER HEARSAY STATEMENTS MADE BY CHILD WITNESS ARE RELIABLE; FURTHER AS ALLEGED VICTIM STATEMENTS WERE IN FACT THE CASE IN CHIEF OF THE PROSECUTION, PETITIONER WAS DENIED EVIDENCE TO IMPEACH TESTIMONY OF SAID.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Presented to the Supreme Court of Alabama; previously presented to trial court and as such was not re-presented in Rule 32.

GROUND TWO: PETITIONER'S CONSTITUTIONAL RIGHT TO A FUNDAMENTALLY FAIR TRIAL AS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT WAS VIOLATED.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): PETITIONER WAS DENIED A FAIR TRIAL WHEN "OTHER ACTS" EVIDENCE WAS ERRONEOUSLY ADMITTED OVER OBJECTION AND OF SUCH QUALITY AS TO PREJUDICE OUTCOME OF TRIAL. BECAUSE OF THE LACK OF A "WEIGHTY" CASE AGAINST PETITIONER, AND PERVASIVENESS OF THE ERRONEOUSLY ADMITTED EVIDENCE OF BAD ACTS, ERROR WAS SO EGREGIOUS AS TO DENY PETITIONER FAIR TRIAL. IN FACT, COURT ORIGINALLY AGREED THAT SAID EVIDENCE SHOULD AND WOULD BE INADMISSABLE, BUT WITHOUT EXPLANATION OVER REPEATED OBJECTIONS ALLOWED THE LITANY OF BAD ACTS ALLEGED ADMITTED.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Presented to the Supreme Court of Alabama; previously presented to trial court and as such was not re-presented in Rule 32.

GROUND THREE: PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AND ON DIRECT APPEAL IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): COUNSEL WAS INEFFECTIVE AT TRIAL BY NOT INVESTIGATING AND UTILIZING MEDICAL EVIDENCE TO REBUT THE TESTIMONY OF ALLEGED RAPE. COUNSEL FAILED ON APPEAL TO PRESERVE AND PRESENT PERTINENT ISSUES TO HIGHEST COURT (I.E. FAILURE OF TRIAL COURT TO REMOVE BIAS JURORS FOR CAUSE, FAILURE OF TRIAL COURT TO HOLD HEARING ON SUFFICIENCY OF 'BATSON' MOTION) THUS LOSING ISSUES FOR PRESERVATION IN INSTANT CASE.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: COUNSEL WAS SAME AT TRIAL AND DIRECT APPEAL AND THEREFORE ISSUE NOT RAISED UNTIL POST CONVICTION PROCEEDING.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: RULE 32 ALACRIMPRO

Name and location of the court where the motion or petition was filed: CIRCUIT COURT OF SHELBY COUNTY, ALABAMA, COLUMBIANA, ALABAMA.

Docket or case number (if you know): CC-00-884, 885 AND 886.
Date of the court's decision: DECEMBER 8, 2004
Result (attach a copy of the court's opinion or order, if available): SUMMARILY DENIED

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ALABAMA CRIMINAL COURT OF APPEALS, MONTGOMERY, ALABAMA.

Docket or case number (if you know): CR-04-0546

Date of the court's decision: APRIL 15, 2005

Result (attach a copy of the court's opinion or order, if available): AFFIRMED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: PETITION FOR WRIT OF CERTIORARI, SUPREME COURT OF ALABAMA.

GROUND FOUR: TRIAL COURT ERRED IN DENYING PETITIONERS RULE 32 PETITION WITHOUT CONDUCTING EVIDENTIARY HEARING IN CONTRADICTION WITH 14TH AMENDMENT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): IT IS WELL ESTABLISHED UNDER PROGENY OF ALABAMA POST CONVICTION RULES THAT IF A RULE 32 HAS MERIT ON ITS FACE IT IS REVERSIBLE ERROR TO DENY SAID PETITION WITHOUT HEARING. PETITIONERS MERITORIOUS PETITION HOWEVER WAS SUMMARILY DENIED IN CONTRADICTION OF WELL ESTABLISHED LAW. PETITIONER SHOULD HAVE BEEN GIVEN EVIDENTIARY HEARING TO ESTABLISH EVIDENCE OF INEFFECTIVE ASSISTANCE, THUS PRESERVING "LOST" ISSUES FOR HABEAS REVIEW.

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: Presented to Supreme Court of Alabama in WRIT FOR CERTIORARI

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: JIM PIND, 363 CANYON PARK DRIVE,
PELHAM, ALABAMA. 35214

(b) At arraignment and plea: SAME AS ABOVE (A)

(c) At trial: SAME AS ABOVE (A)

(d) At sentencing: SAME AS ABOVE (A)

(e) On appeal: SAME AS ABOVE (A)

(f) In any post-conviction proceeding: THOMAS M. GOGGANS, P.O. BOX 1307,
MONTGOMERY, ALABAMA, 36102

(g) On appeal from any ruling against you in a post-conviction proceeding: SAME AS ABOVE (F)

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: to ISSUE AN ORDER VACATING CONVICTIONS AND ORDERING A NEW TRIAL; OR IN LIEU OF SUCH, WOULD ORDER THE CIRCUIT COURT OF SHELBY COUNTY TO CONDUCT AN EVIDENTIARY HEARING AS TO INEFFECTIVE CLAIM, or any other relief to which petitioner may be entitled.

James Graham, Pro se
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____
_____. (month, date, year):

Executed (signed) on Febr. 7, 2006 (date).

James Graham Pro se
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

This Petition for Writ of Habeas Corpus
Mailed from State Correctional Facility
on 2/9/06. V. Bailey
Business Manager